



**MITIGATION REPORT OF**  
**NSTAR ELECTRIC**

**Boston Edison Company  
Cambridge Electric Light Company  
Commonwealth Electric Company**

**January 19, 2001**

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## MITIGATION REPORT OF NSTAR ELECTRIC

### I. INTRODUCTION

On December 4, 2000, the Department of Telecommunications and Energy (the “Department”) approved the request of Boston Edison Company (“Boston Edison”), Cambridge Electric Light Company (“Cambridge”) and Commonwealth Electric Company (“Commonwealth”) (together, “NSTAR Electric” or the “Companies”) to adjust their Standard Offer Service rates by the implementation of the Department-approved Standard Offer Service Fuel Adjustment (“SOSFA”) mechanisms. The Department reviewed the request of NSTAR Electric (and other electric companies in Massachusetts) for an increase in the price for Standard Offer Service to reflect recent and substantial increases in fuel costs and the corresponding increases in the cost of electricity procured to provide Standard Offer Service to customers. Standard Offer Service Fuel Adjustments, D.T.E. 00-66, 00-67, 00-70, at 10-15. The Department found that the implementation of the Companies’ SOSFA and the collection of properly supported fuel costs was consistent with the mandates of the Electric Restructuring Act of 1997 (the “Act”) and the Restructuring Settlement and Restructuring Plans that had been approved by the Department for NSTAR Electric. Id. at 5.

In addition, in the context of its approval of the implementation of the SOSFA, the Department found that it was appropriate to review each distribution company’s efforts to mitigate transition charges further in an effort to explore “every possible mechanism and option to minimize the effects of standard offer adjustments on customers.” Id. Although the Department noted that the issue of transition-cost mitigation is already investigated as part of the Companies’ reconciliation filings with the

Department, the Department ordered each company to file an additional, detailed report describing all mitigation efforts undertaken since March 1, 1998, as well as those planned for 2001. Id. at 15. The Department directed that such report include a description of the following actions:

- the divestiture of non-nuclear generation facilities;
- the divestiture of nuclear generation facilities;
- the renegotiation or buyout of contractual commitments for purchased power;
- the sale of other assets unrelated to the provision of transmission or distribution services; and
- any other efforts to mitigate the level of transition costs.

Id.

Accordingly, pursuant to the Department's December 4, 2000 Order, NSTAR Electric hereby submits its report on the Companies' mitigation efforts since March 1, 1998 (the "Mitigation Report"). Since that time, NSTAR Electric has diligently mitigated the transition charges associated with its generation assets and purchase-power agreements ("PPAs") to the maximum extent possible, including the divestiture of fossil-fueled generation facilities at prices far in excess of their book value and the first-in-the-nation divestiture of a nuclear generation facility (Pilgrim Nuclear Power Station). The Mitigation Report describes the following mitigation efforts undertaken by the Companies since March 1, 1998:

(1) Divestiture of Fossil-Fueled Generating Facilities

- ⇒ Mystic Station
- ⇒ New Boston Station

- ⇒ Edgar Station
- ⇒ Framingham Station
- ⇒ West Medway Station
- ⇒ Wyman 4 Station (partial interests)
- ⇒ Canal 1 and Canal 2
- ⇒ Kendall Station
- ⇒ Martha's Vineyard Diesel Facilities
- ⇒ Ongoing Divestiture of Blackstone Generating Facility

(2) Divestiture of Nuclear Facilities

- ⇒ Pilgrim Nuclear Power Station
- ⇒ Participation of NSTAR Electric in Seabrook Nuclear Power Station Auction

(3) Mitigation Efforts Relating to PPAs

- ⇒ Commonwealth's and Cambridge's 1998 PPA Auction
- ⇒ Reports to Department on Status of PPA Negotiations
- ⇒ NSTAR Electric's 1999 PPA Auction
- ⇒ Amendment by Boston Edison of Two MBTA PPAs
- ⇒ Settlement of Commonwealth's PPA Obligation Dispute with Plymouth Rock Energy Associates, LLP
- ⇒ Renegotiation by Commonwealth of Pilgrim PPA
- ⇒ Buy-Out of Boston Edison's PPA with L'Energia, Limited Partnership
- ⇒ Buy-Out of Commonwealth's PPA with Lowell Cogeneration Company Limited Partnership
- ⇒ Renegotiation by Boston Edison of PPA Relating to Southern Energy Canal, L.L.C.
- ⇒ Renegotiation by Cambridge and Commonwealth of PPAs

Relating to Southern Energy Canal, L.L.C.

- ⇒ Buy-Down of Cambridge's and Commonwealth's PPA Relating to the Seabrook Nuclear Generating Facility
  - ⇒ Renegotiation by Cambridge of PPA with Vermont Yankee
  - ⇒ Ongoing Negotiations Regarding Buy-Out or Buy-Down of Individual PPAs
- (4) Refinancing of Transition Costs
- ⇒ Securitization of Boston Edison's Transition Costs
  - ⇒ Buy-Down of Cambridge and Commonwealth's Regulatory Assets
- (5) Mitigation of Non-Generation Assets
- ⇒ Sales of Real Estate No Longer Needed for the Provision of Transmission or Distribution Service

These and other significant mitigation efforts since March 1, 1998 have resulted in approximately \$1.4 billion in savings to NSTAR Electric's customers.<sup>1</sup> NSTAR Electric's mitigation efforts since March 1, 1998 are described below in more detail.

## **II. FOSSIL-FUELED GENERATING FACILITY MITIGATION**

### **A. Divestiture of Boston Edison's Fossil-Fueled Generating Facilities**

On May 15, 1998, Boston Edison completed the divestiture of its fossil-fueled generating facilities to Sithe Energies, Inc. ("Sithe"). This transaction implemented Boston Edison's obligation as set forth in Section V.C.1 of its Restructuring Settlement

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<sup>1</sup> In addition, it should be noted that prior to March 1, 1998, the Companies succeeded in mitigating power supply costs associated primarily with PPAs negotiated pursuant to state and federal Public Utility Regulatory Policies Act ("PURPA") regulations. Because of these pre-Act mitigation efforts from 1991 through 1997, the Companies achieved estimated savings for their customers of almost \$1.6 billion in addition to those savings realized after March 1, 1998.

Agreement (the “Restructuring Settlement”), which was approved by the Department in Boston Edison Company, D.P.U./D.T.E. 96-23 (1998), to undertake divestiture of its fossil-fueled generating business. This divestiture was carried out through a competitive auction process and approved by the Department in Boston Edison Company, D.T.E. 97-113 (1998) as consistent with the Act and the Restructuring Settlement. The net proceeds of this transaction were subsequently flowed through to customers by way of a Fossil Residual Value Credit, thereby resulting in excess of \$500 million of mitigation of Boston Edison’s transition costs. When the Fossil Residual Value Credit was first implemented on June 1, 1998, it reduced the transition charge by 14 percent.

1. The Assets

Boston Edison’s fossil-fueled generating assets included the following 1,987 MW of capacity located on six sites in Eastern Massachusetts and Maine:

- (1) Mystic Station, consisting of five units – one dual-fuel (oil/gas) unit of 592 MW, three oil-fired steam turbine generating units totaling 388 MW, and a 10 MW oil-fired combustion turbine, located in Everett, Massachusetts;
- (2) New Boston Station, consisting of two dual-fuel (gas/oil) steam turbine generating units totaling 760 MW, and one 18 MW combustion turbine, located in South Boston, Massachusetts;
- (3) Edgar Station, consisting of two combustion turbines with a combined total capacity of 24 MW, located in Weymouth, Massachusetts;
- (4) Framingham Station, consisting of three combustion turbines with a combined total capacity of 33 MW, located in Framingham,



Massachusetts;

- (5) West Medway Station, consisting of three combustion turbines with a combined total capacity of 126 MW, in Medway, Massachusetts; and
- (6) A 5.88 percent (or 36 MW) ownership interest in the oil-fired Wyman 4 unit located in Yarmouth, Maine.

In addition, Boston Edison also sold the land, transmission interface, fuel supply system and contracts, inventories, control systems, office systems, and all other assets directly related to the operation of the units. As an additional element of the transaction, Boston Edison also entered into a power buy-back agreement (the “Transition Agreement”) with Sithe whereby the Company purchased energy and capacity from the divested facilities for a six-month period following divestiture in order to support the Company’s Standard Offer and Default Service obligations to its customers.

## 2. Description of the Divestiture Process

Boston Edison commenced the fossil divestiture process on July 9, 1997 by filing a Divestiture Plan with the Department. To implement this plan, the Company established a multi-disciplinary generation divestiture team to direct the process in an efficient manner and to assure the maximum overall mitigation of transition costs. The Company’s generation divestiture team was composed of Boston Edison employees, management consultants from Reed Consulting Group (now Navigant), financial advisors from Goldman, Sachs & Co. (“Goldman Sachs”), attorneys from Ropes & Gray and environmental specialists. The team was further subdivided, and a due-diligence support team coordinated closely with the other subteams to provide bidders with the necessary

information for them to complete their due diligence on Boston Edison's fossil-fueled units.

Boston Edison sent an early-interest letter to over 1,500 potential purchasers aimed at informing them of the planned sale and soliciting interest. Approximately 10 percent of those informed subsequently expressed some form of interest. Boston Edison evaluated the qualifications of interested parties and invited them to submit non-binding, indicative bids. It then issued an Offering Memorandum to all qualified bidders, which provided a detailed description of Boston Edison's generating facilities, an overview of the bidding process, the preliminary terms of sale, a description of the New England power market, a preliminary Purchase and Sale Agreement and a preliminary Transition Agreement. Qualified bidders also received a set of 11 compact discs with information on the fossil units, which allowed bidders easy and efficient access to documents and thereby facilitated their due-diligence efforts. In addition, Boston Edison established a secure Internet site providing bidders with an additional source of current information and responses to all written questions submitted by bidders. All qualified bidders were also provided the opportunity to tour the fossil-fueled generating facilities and meet key plant personnel. Six bidders were eventually invited to participate in the final bidding process.

During the final bidding stage, Boston Edison provided an extensive amount of information to the bidders, including the opportunity for more detailed site tours and discussions with Boston Edison and its consultants. Boston Edison also organized full-day meetings between its corporate management and each bidder on issues of concern to that individual bidder. In addition, during the final bidding stage, direct contact persons

were assigned to each of the six final bidders to ensure that each of these bidders received information regarding the divestiture process in a timely and consistent fashion.

After the final bids were received, Boston Edison conducted confidential discussions with the top two final bidders, and offered each the opportunity to submit a final supplemental bid. After evaluating the final bids, Boston Edison selected Sithe as the winning bidder for a total sale price of \$657 million, subject to agreed-upon adjustments at closing. The Department found that the auction process used by Boston Edison ensured complete, uninhibited, non-discriminatory access to all data and information by all parties seeking to participate in the auction, and was equitable. D.T.E. 97-113, at 11.

A detailed purchase and sale agreement, the Transition Agreement and other ancillary agreements were executed on December 10, 1997. Following review and approval of these agreements by the Department in D.T.E. 97-113 and receipt of other required regulatory approvals, including those of the Federal Energy Regulatory Commission ("FERC"), the closing of the transaction occurred on May 15, 1998 and represented the first generation divestiture transaction in the Commonwealth completed pursuant to the Act.

### 3. Divestiture Results

As a result of the fossil divestiture process, Boston Edison received net proceeds of approximately \$505 million, which were applied in mitigation of its transition costs. In addition, approximately \$121 million of the total sale price was applied to a "stabilization fund" related to Boston Edison's Transition Agreement obligation, which

was designed to minimize cost deferrals associated with the provision of Standard Offer and Default Service to Boston Edison's customers. The initial estimated calculation of net proceeds and consequent reduction in Boston Edison's Transition Charge was reviewed and approved by the Department in Boston Edison Company, D.T.E. 97-113 (1998). Updated calculations, including final transaction costs and other closing adjustments, were presented and reviewed as a part of Boston Edison's annual Transition Charge True-Up process. See Boston Edison Company, D.T.E. 98-111, at 6-12 (1999).

**B. Divestiture of the Fossil-Fueled Generating Facilities of Canal, Cambridge and Commonwealth**

On May 15, 1998, Cambridge and Commonwealth, along with their affiliate, Canal Electric Company ("Canal") (together, "COM/Electric"), executed agreements with Southern Energy New England, L.L.C. for the sale of COM/Electric's non-nuclear generating assets (except for Cambridge's Blackstone Station, as described below). Those agreements were assigned on July 15, 1998 in order to effect an assignment by Southern Energy New England, L.L.C. of the purchase of: (i) the Canal and Commonwealth generating assets and interests to Southern Energy Canal, L.L.C.; and (ii) the Cambridge generating assets to Southern Energy Kendall, L.L.C. (Southern Energy New England, L.L.C., Southern Energy Canal, L.L.C. and Southern Energy Kendall, L.L.C. are collectively referred herein to as "Southern"). The Department approved the divestiture of COM/Electric's assets in D.T.E. 98-78/83 (1998), finding that COM/Electric's divestiture process maximized the value of their generating assets. Cambridge Electric Light Company, Canal Electric Company and Commonwealth Electric Company, D.T.E. 98-

78/83, at 11-12.

1. The Assets

The divestiture involved the sale of 1,264 MW of non-nuclear generating assets to Southern for \$461.9 million (subject to certain adjustments at closing).

The assets sold to Southern and their associated capacity, were as follows:

- Canal Unit 1 (566 MW) (along with the assignment of four wholesale power sales contracts related to that unit);
- Canal Unit 2 (565 MW) (50 percent owned by Canal and 50 percent owned by Montaup Electric Company);
- Kendall Generating Station (113 MW);
- Five diesel generators located on Martha's Vineyard (13.8 MW); and
- Commonwealth's partial interest (1.4325 percent) in the Wyman 4 generating unit, located in Yarmouth, Maine.

2. Description of the Divestiture Process

Following the decision to divest, COM/Electric established an internal management team consisting of employees, expert consultants and attorneys. COM/Electric retained ICF Resources, Incorporated ("ICF") to evaluate the structural and procedural aspects of the auction and to develop a fair and equitable auction process that would maximize the proceeds from the sale of COM/Electric's assets and entitlements. As part of this assessment, ICF and COM/Electric evaluated the viability of using an auction process to mitigate the transition costs associated with COM/Electric's generating assets and entitlements. ICF issued a report dated March 27, 1997 entitled "Implementing an Auction Process for COM/Electric Generation Assets and Entitlements" (the "Report"). The Report

developed a comprehensive plan by which COM/Electric would divest itself of all of its generating assets and entitlements through a market-driven auction mechanism to maximize transition cost mitigation, and thereby minimize costs to COM/Electric's customers. The Report suggested a sealed-bid auction, followed by negotiations with one or more of the highest bidders for each property, noting that such an approach was successfully used by other utilities in generation divestiture auctions.

Following the issuance of the ICF Report, COM/Electric retained the investment banking firm of Goldman Sachs to develop, in conjunction with COM/Electric's team, a sale process and a schedule to achieve COM/Electric's primary objective of maximizing the value COM/Electric received from the sale. COM/Electric also began compiling and documenting a significant amount of information regarding their generation assets and entitlements in anticipation of the auction. For example, comprehensive environmental assessments of each generating plant site were prepared and a plant survey and inventories were compiled, which were all made available to bidders during the auction process.

COM/Electric's primary goals of the auction were to solicit as many bidders as possible, to maximize the competitive process and to encourage each bidder to maximize the value of its bid. Accordingly, COM/Electric developed a confidential information memorandum and decided to hold two auctions, one for assets and one for entitlements. A specific confidential information memorandum was developed for the asset auction and for the entitlement auction. Each memorandum described in detail the items to be sold and the process and schedule for the sale.

COM/Electric, along with Goldman Sachs, initially identified all qualified potential

purchasers, including without limitation, public utilities, municipal light departments, Qualifying Facilities under the PURPA, Exempt Wholesale Generators under the Energy Policy Act of 1992, independent power producers, marketers and brokers. Goldman Sachs first solicited interested purchasers by sending out an announcement letter in August 1997 to 142 potential bidders, and providing a press release to newspapers and trade publications. The letter informed the potential bidders that selected parties would be notified to participate depending on their ability to meet qualification criteria, and that they would be asked to sign a confidentiality letter in order to receive the bidding package. On October 6, 1997, a further letter, or Request for Qualifications ("RFQ"), was mailed out to selected parties who met the above criteria. The RFQ set forth pertinent information regarding COM/Electric's generating facilities and entitlements and the transaction procedures and schedules.

All inquiries at that stage of the solicitation regarding the asset sale process and responses to the RFQ were directed to Goldman Sachs. Preliminary tours were arranged (as coordinated by Goldman Sachs) for those bidders interested in touring the generation facilities prior to submitting preliminary bids, and COM/Electric made their management and technical people available to answer questions during this round. Bidders were subsequently sent follow-up letters that set a deadline for first-round bids. Of the 20 bidders who had qualified, nine bidders submitted bids for generating assets and five bidders submitted bids for entitlements.

COM/Electric reviewed the preliminary bids and evaluated them to determine which would likely provide the maximum value in the final round and maximize the mitigation of

transition costs. COM/Electric considered such important factors as the price bid, other proposed terms that affect risk allocation, and the ability of the bidder to complete the proposed transaction in a timely manner. In early 1998, COM/Electric invited bidders who submitted preliminary bids meeting these criteria to make binding proposals in the second round.

Following notification to the bidders, presentations were made at management meetings with each of the bidders and a detailed due-diligence review by all invited bidders was conducted. The purpose of the due-diligence stage was to provide specific information to the bidders in order to maximize the value of the bids. In total, responses to approximately 336 information requests were provided during this stage, many consisting of multiple parts. In addition, plant tours were scheduled with each bidder, and specific Company personnel were assigned to each bidder to provide any information required by the bidder. In April 1998, following the due-diligence process, Goldman Sachs provided the bid package to the 13 bidders who had been invited to participate in the second and final round.

COM/Electric's goal in the second round was to maximize value in the auction process, to provide bidders the access to needed information and to encourage the most competitive process to deliver the highest possible bid consistent with the overall objectives of the Restructuring Plan. COM/Electric strictly maintained confidentiality in the process. Bidders were not told how many other bidders were in the preliminary or final rounds, and the identities of all bidders and the contents of the bids remained protected during the process. Bidders were continually apprised only that the auction was robust, and that there



were many interested parties involved in the auction.

COM/Electric set up an internal project team with specific responsibility for providing information to bidders to facilitate the auction process. Questions from bidders covered a broad array of financial, accounting, human resource, technical and legal issues. COM/Electric set up regular meetings and conference calls with each bidder in order to meet each bidder's individual needs. During this second, final phase of the auction, COM/Electric carefully reviewed all the comments received by the bidders to determine whether any accommodations or changes should be made to the final bid package that added value to the auction without subjecting COM/Electric or their customers to undue risk. Many changes to the final auction documents, including changes relating to environmental issues, representations and warranties, the Asset Sales Agreements, and to the provision of Standard Offer Service supply, were made in order to derive the maximum value in the sale consistent with COM/Electric's obligations under the Act and the Restructuring Plan approved by the Department. The more significant changes made in the auction terms to enhance value included:

- An agreement by COM/Electric and Montaup to market the Canal Station jointly and include Montaup's 50 percent ownership interest in Canal Unit 2 in COM/Electric's auction. The change allowed the winning bidder to gain complete ownership and operational control of the facility, which increased its value in auction.
- Information in the final bid package that reported the fact that Canal 1 and Canal 2 had experienced increases in their overall winter maximum capability rating (compared to the values reported in the preliminary bid package) pursuant to capability audits performed in accordance with NEPOOL rating criteria.
- A modification of the bid package that addressed transmission concerns related to the Kendall and Martha's Vineyard Diesel generating assets, which are not

connected directly to the NEPOOL pool transmission facilities (“PTF”) transmission grid. These modifications increased the value of the units.

- The reporting to bidders of progress relating to developing NEPOOL’s new market structure, administered by ISO-New England, Inc. (“ISO”).
- The elimination of a requirement for a 10 percent deposit to be delivered at the time of agreement execution.

After the final group of bidders was selected, each bidder was allowed an additional opportunity for due diligence prior to the deadline for submitting bids in May 1998. This included continued access to COM/Electric’s facilities, records and necessary personnel. Bidders submitted a fixed price bid for the generation assets. Bidders were required to note any exceptions to the transaction documents as part of their bid. For generation assets, the bids were evaluated on the basis of which bid produced the highest purchase price (considering any exceptions) and therefore the lowest transition cost to retail customers. The Southern bid produced the best price and the most benefit for COM/Electric’s customers.

### 3. Divestiture Results

Southern submitted the highest, best bid in an open and competitive process designed to solicit the highest prices for COM/Electric’s assets. The process attracted numerous participants and resulted in significant value for COM/Electric’s facilities. The price paid by Southern for COM/Electric’s fossil-fueled generation assets, approximately \$461 million, was almost six times the book value of those assets. Based on the results of the divestiture, retail customers of Cambridge and Commonwealth realized reductions in their transition charges of 30 percent and 23 percent, respectively.

### **C. Negotiations To Divest Blackstone Generating Facility**

In addition to the divestiture of the above-referenced fossil-fueled generating facilities, Cambridge has pursued the divestiture of the Blackstone Generating Facility (“Blackstone”), located in Cambridge, Massachusetts. Prior to 1992, Blackstone generated both electricity and steam. Since that time, the facility has been primarily used for the production of steam, which has been sold and delivered to Harvard University (“Harvard”) and other steam customers. The steam produced by Blackstone provides the sole means for heating Harvard’s Cambridge and Allston campuses. Among the portfolio of generating facilities previously held by NSTAR Electric, Blackstone is unique in that the facility is subject to a Right of First Offer held by Harvard on any divestiture of that facility.

The Right of First Offer emanated from events occurring during 1993. At that time, Harvard and COM/Energy Steam Company entered into negotiations with regard to the potential extension of an Agreement for Steam Service between those entities, which set forth the terms under which COM/Energy Steam Company delivers and sells steam to Harvard. At the time of the negotiations, Harvard was concerned that Commonwealth Energy System might be the subject of a corporate takeover. Harvard believed that, if the assets of Commonwealth Energy System’s subsidiaries, including Blackstone Station, were sold, Harvard’s ability to be provided steam service to serve its campuses might be jeopardized. Harvard was further concerned because it had over the years been able to negotiate only short-term Steam Service Agreements with COM/Energy Steam Company, and this concern was amplified during the 1993 time period.

Accordingly, Harvard was looking for means by which its long-term steam needs could be met. COM/Energy Steam Company was interested in securing a long-term contract with Harvard, because steam service out of Blackstone Station provided substantial benefits both to COM/Energy Steam Company and to Cambridge's customers. These benefits derived from the fact that, because Cambridge was able to sell both electricity and steam from Blackstone, and Harvard purchased steam output from the facility, Cambridge's customers would realize an economic benefit from the continued operation of Blackstone because costs are allocated to the steam operations. See Cambridge Electric Light Company, D.P.U. 20104 (1979) at 8-10. Harvard approached COM/Energy Steam Company and Cambridge suggesting that a long-term Steam Service Agreement was critical to Harvard. However, Harvard believed such an agreement could be completed only if Harvard's concerns over long-term steam security were addressed. Because the discussions with regard to the terms of any Right of First Offer provided assurances that Cambridge and its customers would receive full value in the event of any sale, it was determined that the execution of the Right of First Offer provided clear benefits to Cambridge's customers. As a result, at the time that the Steam Service Agreement was executed by and between COM/Energy Steam Company and Harvard, Cambridge entered into the Right of First Offer with Harvard.

The agreement accompanying the Right of First Offer provides that, in the event Cambridge divests itself of Blackstone, it must first offer the facility to Harvard at market value. By agreement, market value is to be determined by means of an appraisal. Since March 1, 1998, Cambridge has engaged in ongoing discussions with Harvard regarding

the potential sale of Blackstone as part of the restructuring process. In addition, COM/Electric hired the firm of R.W. Beck to conduct an appraisal of the fair market value of the Blackstone generating facility, a copy of which was submitted to the Department in response to Information Request AG-8-5 in Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 99-90. Discussions with Harvard continue with respect to Blackstone, and Cambridge will inform the Department in the future when its mitigation efforts regarding Blackstone are completed.

### **III. NUCLEAR GENERATING FACILITY MITIGATION**

#### **A. Boston Edison's Pilgrim Nuclear Power Station**

On July 13, 1999, Boston Edison Company completed the divestiture of the Pilgrim Nuclear Power Station in Plymouth, Massachusetts ("Pilgrim") to Entergy Nuclear Generation Company ("Entergy"). This transaction implemented the obligation as set forth in Section V.C.2 of Boston Edison's Restructuring Settlement to implement a market-valuation plan for Pilgrim and to reflect the results of that market valuation as a residual value credit which would be reflected as mitigation of Boston Edison's transition costs. This obligation was carried out through an open and competitive auction process and represented the first-ever successful sale of a commercial nuclear plant. The sale agreement, including arrangements for the full funding and transfer of the decommissioning trust for the plant, buyouts or termination of existing wholesale power agreements, and ancillary power buy-back agreements, was reviewed and approved by the Department in Boston Edison Company, D.T.E. 98-119 (1999) as consistent with the Act and the Restructuring Settlement. The net proceeds of all of these associated transactions

are flowed through to customers and all costs are reconciled as a part of Boston Edison's annual transition charge true-up proceedings.

1. The Assets

The primary asset sold was the Pilgrim Nuclear Power Station, which is a 670 MW boiling-water reactor located in Plymouth, Massachusetts. The sale also included the Pilgrim switchyard, the Chiltonville Training Center and approximately 1,700 acres of land on which these facilities are located.

As part of the divestiture transaction, Entergy assumed all liability for the eventual decommissioning of Pilgrim. Specifically, Entergy assumed all liabilities relating to the following: (1) the decommissioning of Pilgrim following permanent cessation of operations; (2) the management, storage, transportation and disposal of spent nuclear fuel; and (3) any other post-operations disposition of Pilgrim. Boston Edison agreed to transfer approximately \$428 million at closing to fund a trust to provide Entergy with funds to address these decommissioning liabilities (the "Decommissioning Trust").

In addition to divesting Pilgrim and assigning the liability for its decommissioning to Entergy, Boston Edison also terminated or assigned 16 wholesale power contracts associated with Pilgrim.<sup>2</sup> Both Commonwealth and Montaup Electric Company entered into contract amendments with Boston Edison effectively terminating those contracts in

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<sup>2</sup> Prior to the divestiture transaction, Boston Edison sold approximately 25.73 percent of Pilgrim's output to 16 wholesale contract customers under long-term or life-of-unit contracts. Two contract customers, Commonwealth and Montaup Electric Company, purchased 11 percent of Pilgrim's capacity and output under similar life-of-the-unit contracts. The 14 other contract customers were municipal electric departments which, in the aggregate, purchased 3.73 percent of Pilgrim's capacity and output under long-term contracts.

exchange for payment of their shares of decommissioning liability and unrecovered plant balances and the crediting of their shares of net sale proceeds. Both also executed new PPAs with Entergy for their respective 11 percent shares of Pilgrim's output.<sup>3</sup>

As part of the Pilgrim divestiture transaction, Boston Edison also executed PPAs with Entergy whereby Boston Edison purchases 78 percent of Pilgrim's capacity and output in 1999, with declining percentages through 2004. The output associated with these PPAs is used by Boston Edison to serve its Standard Offer customers.

## 2. Description of the Divestiture Process

Boston Edison began the process leading to the divestiture of Pilgrim in November 1997 when its senior officers established and oversaw a team of employees, whose objective was to recommend the best way to maximize the value of Pilgrim. This team investigated four possible alternatives for Pilgrim: (1) the sale of the plant; (2) the continued operation of the plant; (3) an alliance with other plant owners; or (4) plant shutdown. The team concluded that the best future for Pilgrim was a sale by way of a bid process that would likely result in the highest value for Boston Edison's nuclear assets.

Boston Edison's divestiture process was developed and implemented by its Pilgrim divestiture team consisting of Boston Edison management and employees,

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<sup>3</sup> Despite negotiations, Boston Edison was unable to secure the municipal electric departments' assent to a termination of the municipal contracts. Accordingly, Boston Edison assigned the physical delivery obligations under the existing contracts to Entergy in 14 partial assignments to become effective upon closing. Ultimately, this issue was addressed in a settlement before the FERC approved on November 23, 1999. Pursuant to the settlement, the municipal electric departments bought out of their contracts with Pilgrim on December 31, 1999 and the approximately \$24 million in credits resulting from this contract termination will flow to Boston Edison's customers through a reduced transition charge.

attorneys and numerous expert consultants needed to address the many unique issues associated with this first-of-a-kind sale of an operating nuclear plant. As an initial step in the process, Boston Edison sent an early interest letter to approximately 175 potential purchasers indicating its interest in selling Pilgrim. The early interest letter provided information aimed at educating potential bidders and piquing their interest in order to generate a competitive bidding process. In addition to the early interest letters, Boston Edison continued to market Pilgrim through speaking engagements at industry conferences as well as through one-on-one marketing to leading nuclear operators. Boston Edison received letters of interest from 11 of the approximately 175 parties initially contacted.

After receiving responses to the early interest letter, Boston Edison evaluated the qualifications of the interested parties to ensure that they would be capable of purchasing and operating the assets. Of the 11 parties expressing interest, nine signed a confidentiality agreement and were approved by Boston Edison as qualified. Qualified bidders were invited to submit non-binding indicative bids, and based on those bids, four bidders were invited to participate in the final bidding process. After the final bids were received, Boston Edison conducted confidential discussions with the top two final bidders and offered each the opportunity to submit a supplemental bid. After evaluating the supplemental bids, Boston Edison selected Entergy as the winning bidder.

On November 18, 1998, Boston Edison and Entergy executed a detailed purchase and sale agreement for the Pilgrim divestiture, along with a number of related agreements and PPAs. Also included were agreements with Commonwealth and Montaup Electric



Company effecting the termination of their existing wholesale agreements with Boston Edison and new PPAs with Entergy.<sup>4</sup> Over the following five months all parties diligently pursued necessary regulatory approvals including, most notably, those from the Department, the FERC and the Nuclear Regulatory Commission. The Department's approval was provided on March 22, 1999 in Boston Edison Company, D.T.E. 98-119. Following receipt of remaining approvals and completion of all closing conditions, closing occurred on July 13, 1999.

### 3. Divestiture Results

The purchase price for Pilgrim as agreed to in the purchase and sale agreement was \$80 million, subject to several adjustments including changes in inventory and nuclear fuel, depending on the timing of the actual closing. In addition, as noted previously, the transaction also included Entergy's assumption of future decommissioning liabilities (estimates for which ranged to upwards of \$700 million) in exchange for Boston Edison's obligation to fund the Decommissioning Trust at a cost in excess of \$400 million. The overall result of the Pilgrim divestiture transaction, including all of the related transactions and costs, is an estimated \$250 to \$300 million in savings to customers.<sup>5</sup>

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<sup>4</sup> Commonwealth's termination of its wholesale agreement with Boston Edison and its renegotiated contract with Entergy is described further in Section IV.C.3, infra.

<sup>5</sup> Among the related costs was a comprehensive agreement with the Town of Plymouth as required by Massachusetts General Laws, c. 59, § 38H(c) relating to future property tax obligations and payments in lieu of taxes.

**B. Participation of NSTAR Electric in Seabrook Nuclear Power Station Auction**

1. The Facility

The Seabrook Nuclear Power Station (“Seabrook”) is located in Seabrook, New Hampshire. NSTAR Electric’s subsidiary, Canal Electric Company, owns an approximate 3.52 percent interest in Seabrook as a tenant in common with other investor-owned and municipal utilities.<sup>6</sup> In addition, Cambridge, Commonwealth and Canal are currently parties to a life-of-the-unit PPA for Canal’s electric output from Seabrook, which terminates in 2026.<sup>7</sup>

2. Description of the Divestiture Process

NSTAR Electric is participating in an auction that would result in the divestiture of Canal’s interest in Seabrook. As part of this auction, several other owners of Seabrook will also seek to divest their respective shares of the facility. The effort by several of Seabrook’s owners to divest themselves of their shares of Seabrook stems from various regulatory and statutory sources.

For example, on August 2, 1999, Public Service Company of New Hampshire (“PSNH”) and its parent company, Northeast Utilities (“NU”), entered into a settlement

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<sup>6</sup> Other entities with ownership interests in Seabrook include North Atlantic Energy Corporation (35.98 percent), United Illuminating Company (17.5 percent), Great Bay Power Corporation (12.13 percent), Massachusetts Municipal Wholesale Electric Company (11.59 percent), New England Power Company (9.96 percent), Connecticut Light & Power Company (4.06 percent), Little Bay Power Corporation (2.90 percent), New Hampshire Electric Cooperative (2.17 percent), Taunton Municipal Light Plant (0.10 percent) and Hudson Light and Power Department (0.08 percent).

<sup>7</sup> Mitigation of this contractual commitment is discussed further in Section IV.C.7, infra.

agreement with the New Hampshire Attorney General, the New Hampshire Governor's Office of Energy and Community Services and the staff of the New Hampshire Public Utility Commission to resolve issues pertaining to electric restructuring in New Hampshire. That settlement agreement provides that PSNH and NU will sell their share of Seabrook (owned by their affiliate North Atlantic Energy Corporation ("NAEC")) no later than December 31, 2003. In addition, pursuant to Connecticut Public Act 98-28, Connecticut Light and Power Company, an affiliate of PSNH, has a similar obligation to divest its ownership share in Seabrook. The United Illuminating Company, a public utility operating in Connecticut, has a similar statutory obligation to divest its interest in Seabrook.

Pursuant to that settlement agreement, NAEC is obligated to make all reasonable efforts to include minority ownership shares, such as those held by Canal, in the sale of Seabrook, to enhance the bid price of the plant by offering a controlling interest to the prospective purchaser. The auction has commenced and bids will likely be submitted by April 2001. NSTAR Electric will provide more information to the Department about the Seabrook auction when it becomes available.

#### **IV. POWER PURCHASE AGREEMENT MITIGATION EFFORTS**

In addition to the successful efforts of Boston Edison, Commonwealth and Cambridge to divest themselves of their fossil-fueled and nuclear generation assets, each

company has attempted to divest or renegotiate its PPAs.<sup>8</sup> Boston Edison discussed its mitigation efforts in two previous mitigation reports filed with the Department (filed on August 24, 1999 in Department Investigation of Power Purchase Agreement Mitigation, D.T.E. 99-62 and on July 30, 1998 in Department Investigation of Power Purchase Agreement Mitigation, D.T.E. 98-62). In addition, Boston Edison submitted a PPA Divestiture Plan in June 1998, which provided for a combination of continued bilateral negotiations with the PPA sellers and an auction process to assign the rights to the PPA entitlements to be conducted in 1999.

Cambridge and Commonwealth also filed mitigation reports in D.T.E. 99-62 (on August 23, 1999) and in D.T.E. 98-62 (on July 31, 1998). Cambridge and Commonwealth attempted to divest their entitlements through a separate entitlement auction held with their 1998 auction to divest generation assets. As described below, neither of these auctions resulted in the transfer to third parties of the rights and obligations under the PPAs since the bids would not provide mitigation benefits to customers. However, NSTAR Electric has successfully bought out, bought down or otherwise renegotiated contractual obligations with individual suppliers in a way that has provided mitigation of transition costs for customers.

**A. 1998 COM/Electric Entitlement Auction**

Prior to the merger of BEC Energy and Commonwealth Energy System in 1999,

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<sup>8</sup> A list of the PPAs held by Boston Edison, Cambridge and Commonwealth may be found in Section IV.B, infra.

COM/Electric attempted to divest itself of its portfolio of PPAs in an entitlement auction. In conjunction with its auction of fossil generation units described above, Cambridge and Commonwealth solicited bids to purchase COM/Electric's entitlements to its entire portfolio of PPAs.

Under that auction process, COM/Electric would enter into agreements with the winning bidder(s) through which the bidder would receive the electric energy and capacity to which COM/Electric had rights under the PPA. The winning bidder would also be required to make all payments pursuant to the PPA for energy and capacity, and would also make (or receive) fixed payments to (or from) COM/Electric to reflect the difference between the payments to be made under the terms of the PPA and the perceived future value (i.e., market price) of the electricity purchased. Thus, if the PPA was considered "above-market" the bidder would receive a payment from COM/Electric, and that payment would be considered a transition cost. In addition to soliciting third parties for a transfer of the PPA entitlements, COM/Electric also solicited bids from the owners/operators of generation facilities with whom COM/Electric had PPAs. These bidders had the option of proposing buy-outs or buy-downs of existing contractual obligations.

Bids were received in 1998. Despite repeated attempts to negotiate reasonable terms with bidders, it was not possible to enter into arrangements with third parties that would benefit customers by providing mitigation of transition costs. In essence, all bids were rejected because the payments that would have been made to bidders to induce them to take on the financial obligations of the over-market PPAs would have increased the

level of transition costs that would be borne by customers. Aside from a PPA that was bought out from Lowell Cogeneration Company Limited Partnership (described infra), no other transfers of PPAs, renegotiations or terminations resulted from this entitlement auction.

## **B. 1999 Joint Auction of PPAs**

After the 1999 merger that created NSTAR, the Companies initiated a joint auction that included all of their remaining power contracts, as well as the supply of their Standard Offer load. The joint auction commenced in September 1999.

### **1. Objectives of the Joint Auction**

On September 13, 1999, NSTAR Electric announced its intention to sell or otherwise transfer its rights to certain PPAs through a competitive bidding process and to seek offers to provide power to meet certain of its Standard Offer Service load requirements. To facilitate the solicitation process, the Companies retained Navigant Consulting Inc. (“Navigant”) to manage the marketing and due-diligence activities.

The solicitation process included obtaining competitive bids for NSTAR Electric’s interests in 29 separate PPAs totaling approximately 2,000 MW of capacity and associated energy. Collectively, the PPAs represented a portfolio of entitlements in generation facilities that are strategically located throughout New England, have a broad range of fuel types, operational characteristics, contract terms and pricing provisions, and offered both the diversity and the optionality necessary for successful trading in ISO New England (“ISO-NE”). NSTAR Electric anticipated that it either would directly assign the PPAs to the winning bidder(s) or, where contracts were not readily assignable, enter into

a back-to-back arrangement, thus effectively transferring all rights and obligations under the PPAs to the winning bidder(s) for the remaining term of the PPAs.

In parallel with the PPA auction, NSTAR Electric solicited offers for power necessary to meet certain of its Standard Offer Service obligation to retail customers. For purposes of the solicitation process, Standard Offer Service load included all of NSTAR Electric's Standard Offer Service energy and capacity requirements for the period July 1, 2000 through February 28, 2005 and wholesale load obligations, excluding 37.6 percent of the Standard Offer Service load of Cambridge and Commonwealth, which is supplied by Southern pursuant to COM/Electric's divestiture of its fossil-fueled generation assets. Although the PPA and Standard Offer Service load competitive bidding processes were conducted simultaneously, they were not contingent upon one another. NSTAR Electric believed, however, that offering bidders the option to participate in parallel processes enhanced the flexibility of each opportunity and would provide certain advantages to bidders participating in both solicitations.

To optimize the flexibility of the offering, NSTAR Electric solicited bids for: (1) all PPAs, any individual PPA, or any combination of PPAs; and/or (2) all Standard Offer Service load or increments of Standard Offer Service load. The intent of this design was to maximize the value of the solicitation process, thereby achieving the following auction objectives:

- Mitigating the total cost of the PPAs, resulting in the highest possible level of customer savings;
- Insulating the Companies' customers, to the greatest extent possible, from future market prices risks inherent in the PPAs;

- Maximizing competition in the acquisition of Aggregate Standard Offer Service Load; and
- Ensuring that the auction process was unbiased, open, timely, efficient and fair to all affected parties.

2. Description of Solicitation Process

As part of the solicitation process, NSTAR Electric made available to qualified bidders interests in 29 separate PPAs totaling approximately 2,000 MW of capacity and associated energy. The table below provides an overview of the PPAs that were offered through this competitive bidding process.



### **NSTAR ELECTRIC PPAs**

Unit & Contract	Capacity (MW)		Location	Expiration	Fuel	Technology
	Summer	Winter				
<b>Altresco-Pittsfield</b> (Cambridge)	24.26	29.76	Pittsfield, MA	2011	Gas	Combined cycle cogen
<b>Altresco – Pittsfield</b> (Commonwealth)	24.26	29.76	Pittsfield, MA	2011	Gas	Combined cycle cogen
<b>Boott Hydro</b> (Commonwealth)	20.00	20.00	Lowell, MA	2023	Water	Hydro
<b>Canal 1</b> (Boston Edison)	139.75	141.50	Sandwich, MA	2002	No. 6 fuel oil	Steam boiler
<b>Canal 1</b> (Cambridge and Commonwealth)	139.75	141.50	Sandwich, MA	2002	No. 6 fuel oil	Steam boiler
<b>Chicopee Hydro</b> (Commonwealth)	2.20	2.20	Chicopee, MA	2015	Water	Hydro
<b>Collins Hydro</b> (Commonwealth)	1.30	1.30	N. Wilbraham, MA	2014	Water	Hydro
<b>Dartmouth Power</b> (Commonwealth)	61.80	68.20	Dartmouth, MA	2017	Gas	Combined cycle with supplemental firing
<b>HQ Transmission &amp; Firm Energy</b> (Boston Edison)	200.80	70.30	Quebec, Canada	2021	Water	Hydro and transmission access
<b>HQ Transmission &amp; Firm Energy</b> (Commonwealth, Cambridge, and Canal Electric)	67.85	23.77	Quebec, Canada	2021	Water	Hydro and transmission access
<b>Masspower</b> (Boston Edison)	100.00	117.00	Indian Orchard, MA	2013	Gas	Combined cycle cogen
<b>MASSPOWER 1</b> (Commonwealth)	25.72	30.00	Indian Orchard, MA	2008	Gas	Combined cycle cogen
<b>MASSPOWER 2</b> (Commonwealth)	25.72	30.00	Indian Orchard, MA	2013	Gas	Combined cycle cogen
<b>MBTA 1</b> (Boston Edison)	25.00	33.40	South Boston, MA	2005	Jet Fuel	Combustion turbine
<b>MBTA 2</b> (Boston Edison)	25.00	34.70	South Boston, MA	2019	Jet Fuel	Combustion turbine
<b>NEA A</b> (Boston Edison)	126.07	155.22	Bellingham, MA	2016	Gas	Combined cycle cogen
<b>NEA B</b> (Boston Edison)	78.44	96.58	Bellingham, MA	2011	Gas	Combined cycle cogen
<b>NEA 1</b> (Commonwealth)	23.35	28.74	Bellingham, MA	2016	Gas	Combined cycle cogen
<b>NEA 2</b> (Commonwealth)	19.61	24.15	Bellingham, MA	2016	Gas	Combined cycle cogen
<b>Ocean State 1</b> (Boston Edison)	62.04	72.85	Burrillville, RI	2010	Gas	Combined cycle cogen
<b>Ocean State 2</b> (Boston Edison)	62.57	72.85	Burrillville, RI	2011	Gas	Combined cycle cogen
<b>Pilgrim</b> (Boston Edison)	493.79	497.58	Plymouth, MA	2004	Nuclear Fuel	Nuclear
<b>Pilgrim Municipals</b> (Boston Edison)	24.80	25.00	Plymouth, MA	2004	Nuclear Fuel	Nuclear
<b>Pilgrim</b> (Commonwealth)	73.14	73.68	Plymouth, MA	2004	Nuclear Fuel	Nuclear
<b>Pioneer Hydro</b> (Commonwealth)	1.30	1.30	Ware, MA	2014	Water	Hydro
<b>Seabrook</b> (Commonwealth and Cambridge)	40.50	40.50	Seabrook, NH	2026	Nuclear Fuel	Nuclear
<b>SEMASS</b> (Commonwealth)	46.18	52.58	Rochester, MA	2015	Refuse	Steam boiler
<b>SEMASS Expansion</b> (Commonwealth)	20.85	24.32	Rochester, MA	2015	Refuse	Steam boiler
<b>Vermont Yankee</b> (Cambridge)	11.26	11.91	Vernon, VT	2012	Nuclear Fuel	Nuclear
<b>Total MW</b>	<b>1967.31</b>	<b>1950.65</b>				

On September 13, 1999, an early interest letter was issued to nearly 1,300 industry participants worldwide. These companies and individuals were selected based on Navigant's experience in prior transactions involving electric generation resources. Pursuant to the early interest letter, 52 companies formally expressed interest in participating in the solicitation process. Each of those parties was sent two documents:

an RFQ and a confidentiality agreement. The purposes of the RFQ was to ensure that all parties submitting final bids had the requisite financial and operating qualifications, and that there were likely to be no material impediments to closing a transaction.

Of the 52 companies that responded to the early interest letter, 26 executed confidentiality agreements and were deemed qualified to participate in the solicitation process. From October 25, 1999 through January 19, 2000, NSTAR Electric and Navigant provided qualified bidders with an offering memorandum and significant amounts of related supplemental information including a virtual data room on CD-ROMs and PPA valuation spreadsheets on magnetic diskettes. In addition, bidders were provided access to a secure web site through which specific questions were asked and answered.

On January 24, 2000, 15 of the qualified bidders submitted final bids. In addition, one qualified bidder submitted a bid on February 1, 2000. The majority of the bids contained numerous options with respect to both the PPAs and the Standard Offer Service load. Several bids were resubmitted with clarifications sought by NSTAR Electric and Navigant during a two-week period after the bid due date. PPA bids included: one Full Portfolio with 100 percent Standard Offer Service, one Full Portfolio without Standard Offer Service, one Full Portfolio (without nuclear units) and without Standard Offer Service, and 12 offers on various combinations of PPAs and Standard Offer Service amounts. Standard Offer Service bids included eight Standard Offer Service offers contingent upon PPAs and three non-contingent Standard Offer Service offers.

Most PPA bids were in the form of a support payment payable monthly to the

bidder. Few bids also offered the option of a lump-sum payment. One PPA bid was structured as unit-based (\$/MWh) offer. Offers to serve the Companies' Standard Offer Service Load obligations were bid mostly as an average annual unit-based price (\$/MWh). Some Standard Offer Service bids structured pricing according to time of day (peak/off-peak) and calendar month.

The financial evaluation of the preliminary bids did not yield evidence of any mitigation for NSTAR Electric's customers. Analysis showed that most bidders required a significant premium over the estimated cost of the PPAs. Standard Offer Service bid prices were above what NSTAR Electric believed to be sustainable in the New England marketplace. Additionally, in several cases, there were no offers to supply the Companies with energy commensurate to amounts under the PPA entitlements that the bidders would have simultaneously acquired.

### 3. Results of the Joint Auction

From February through June 2000, NSTAR Electric and Navigant simultaneously reviewed bids, asked for clarifications to certain bid proposals, and suggested revisions with respect to specific terms and pricing. At all times during this process, the Companies' objectives remained constant and were focused on maximizing the value of proposed transactions to customers. The Companies and Navigant continued detailed discussions with several of the qualified bidders during that time. At the end of the solicitation process, despite the number of participants and the depth of discussions, the premium required by bidders to compensate them for taking on the market, financial and contractual risks associated with the PPAs and Standard Offer Service load could not be

justified. As such, NSTAR Electric determined that it would not be in the best interests of its customers to enter into a transaction as a result of the solicitation process.<sup>9</sup>

**C. Renegotiation of Individual PPAs**

Although the Companies have not yet successfully auctioned all of their entitlements collectively to a third party, the Companies have attempted since March 1, 1998 to renegotiate their respective PPAs with individual suppliers. These efforts have achieved significant savings for customers in many instances, as discussed further below:

1. Amendment by Boston Edison of two MBTA Power Purchase Agreements

Boston Edison purchases electricity from the Massachusetts Bay Transportation Authority (the “MBTA”) under two agreements for the Sale of Capacity and Energy from a Combustion Turbine Unit—one dated May 8, 1986 (the “Jet 1 Agreement”) for 35.5 MW, and the other dated March 17, 1993, as amended (the “Jet 2 Agreement”) for the purchase of 33.5 MW. Unless otherwise terminated, the Jet 1 Agreement will continue in force through the year 2005, or for the useful life of the facility, whichever is earlier; and the Jet 2 Agreement will continue in force through the year 2019, or for the useful life of the facility, whichever is earlier.

In order to mitigate Boston Edison’s cost of purchasing power pursuant to these contracts, Boston Edison and the MBTA amended the Jet 1 Agreement and the Jet 2

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<sup>9</sup> It should be noted that, although no contracts resulted directly from the solicitation process, subsequent discussions with bidders led to negotiated agreements to serve a portion of the Companies’ requirements for Standard Offer Service for the period July through December 2000.

Agreement as of September 15, 1998. In both the Jet 1 and Jet 2 Agreements, the cost reduction is obtained by predefining the hourly operation and maintenance (“O&M”) expense associated with the operation of the facility. The O&M expense for the first 200 hours of annual operation throughout the remaining contract term will remain constant, while the O&M expense associated with annual operation in excess of 200 hours will be an annually derived value. In the Jet 2 Agreement, Boston Edison will experience an additional cost reduction in the capacity rate through a 50 percent reduction in the escalation component of the rate. In addition, the amendments to both agreements include a provision permitting Boston Edison to assign or transfer its rights and obligations under the agreements without the MBTA’s consent, provided that the assignee meets certain creditworthiness criteria.

2. Settlement of Commonwealth’s Dispute with Plymouth Rock Energy Associates, L.P.

Commonwealth and Plymouth Rock Energy Associates, L.P. (“PREA”) were parties to protracted litigation dating back to 1992. In April of that year, PREA presented to Commonwealth a proposal that PREA construct a 5 MW cogeneration facility to serve the Independence Mall in Kingston, Massachusetts. PREA claimed an entitlement under Massachusetts regulations to a long-term (20 year) PPA with Commonwealth whereby Commonwealth would be obligated to purchase electric power generated by the PREA facility at rates established in 220 C.M.R. 10.07(1). Commonwealth responded to PREA’s proposal by offering: (1) to purchase PREA’s energy at PREA’s energy cost; and (2) to entertain a bid from PREA for a contract, including capacity base payments, at

such a time when the company had a need for additional capacity. PREA initiated a proceeding at the Department seeking to have the Department order Commonwealth to execute the requested long-term PPA. That proceeding resulted in an order from the Department that found that PREA was entitled to a long-term contract, but only at Commonwealth's short-run energy purchase rate. Plymouth Rock Energy Associates, D.P.U. 92-122 (1994).

The decision was appealed by PREA to the Massachusetts Supreme Judicial Court (the "SJC") and the SJC vacated the Department's decision and remanded it back to the Department (see Plymouth Rock Energy Associates v. Department of Public Utilities, 420 Mass. 168 (1995)). On August 21, 1996, the Department issued a further order, which found that Commonwealth was not required to enter into a long-term contract with PREA, but that PREA was entitled to the short-run energy purchase rate established by state regulation and to capacity payments if, and only if, Commonwealth was found to be capacity deficient. Plymouth Rock Energy Associates, D.P.U. 92-122-A (1996).

PREA again appealed the Department's decision to the SJC. Between October 1, 1997 and November 1998, Commonwealth and PREA engaged in negotiations which resulted in a settlement agreement being executed on November 30, 1998 (the "PREA Settlement Agreement"). Pursuant to the terms of the PREA Settlement Agreement, Commonwealth paid PREA approximately \$2 million in settlement of all claims relating to D.P.U. 92-122 and D.P.U. 92-122-A, with PREA withdrawing its appeal at the SJC. The Department approved the PREA Settlement Agreement in Plymouth Rock Energy Associates, D.P.U. 92-122-B (1999).

The PREA Settlement Agreement resulted in the mitigation of transition costs for Commonwealth's customers through the avoidance of further litigation and a possible adverse decision that may have required Commonwealth to pay for PREA's power. Accordingly, the PREA Settlement Agreement limited the costs that could have been incurred by the company's customers in the future.

### 3. Renegotiation of Commonwealth's Pilgrim Power Purchase Agreement

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Prior to Boston Edison's divestiture of Pilgrim to Entergy, Commonwealth purchased 11 percent of Pilgrim's capacity and output under a life-of-the-unit PPA. This PPA dated from 1972. As part of Boston Edison's divestiture transaction with Entergy, this PPA was terminated and was replaced with a new contract with Entergy that allows Commonwealth to purchase a smaller share of Pilgrim's output beginning in 2002. The replacement contract ends in 2004. Commonwealth's entitlement for the output of Pilgrim under the replacement contract will decline from an 11 percent entitlement in 1999 to 5.5 percent in 2004. In consideration of the termination of the Boston Edison PPA, Commonwealth paid Boston Edison 11 percent of the following three items: (1) the balance of Pilgrim's net unit investment and related regulatory asset balances, less a contract adjustment for \$3.5 million; (2) decommissioning costs, less the value of payments previously made by Commonwealth for decommissioning; and (3) any liabilities Boston Edison may incur arising from its ownership and operation of Pilgrim prior to the closing date of the Pilgrim divestiture transaction. In addition, Commonwealth was credited for 11 percent of the net proceeds of the sale to Entergy.

The Department approved the contract buy-out and the renegotiated PPA with Entergy in Commonwealth Electric Company, D.T.E. 98-126 (1999).

As a result of Commonwealth's efforts to renegotiate its Pilgrim PPA, Commonwealth's customers will achieve estimated savings of approximately \$35 million and will eliminate Commonwealth's future potential risk associated with the continued operation of Pilgrim.

4. Buy-Out of Boston Edison's Purchase Power Agreement with L'Energia, Limited Partnership

Boston Edison and L'Energia, Inc. entered into a PPA dated July 19, 1988, which was amended on August 22, 1990. Pursuant to that agreement, Boston Edison purchased 73 percent of the capacity and associated electric energy produced by L'Energia, Inc.'s facility located in Lowell, Massachusetts. In addition, Boston Edison was under an obligation to pay on- and off-peak energy rates for each kilowatthour ("kWh") delivered to Boston Edison. The agreement was to terminate on March 11, 2013.

In April 1998, Boston Edison and L'Energia Limited Partnership ("LELP") (L'Energia, Inc.'s successor in interest) began an intense, continuous negotiation process, which led to the execution of a Memorandum of Understanding on December 24, 1998 whereby Boston Edison agreed to pay LELP \$67 million to terminate the PPA. The extended negotiation period (nine months) was in large part a result of Boston Edison's focus on achieving maximum mitigation on behalf of its customers. The buy-out agreement was approved by the Department in Boston Edison Company, D.T.E. 99-16 (1999). As a result of the buy-out, it was estimated that Boston Edison's customers will



save approximately \$25 million.

5. Buy-Out of Commonwealth's Power Purchase Agreement with  
Lowell Cogeneration Company Limited Partnership

Commonwealth and Lowell Cogeneration Company Limited Partnership ("Lowell Cogen") entered into a PPA on September 29, 1986, and supplemented it on March 30, 1987. Pursuant to that agreement, Commonwealth purchased the entire electrical output of the 28 MW Lowell Cogen facility. Commonwealth and Lowell Cogen restructured the PPA on September 16, 1994, pursuant to which Commonwealth agreed that: (1) it would make specified fixed and escalating monthly payments to Lowell Cogen; (2) it need not buy Lowell Cogen's output until January 1, 2001; (3) it may call the unit into service before then if it is needed; and (4) it must buy Lowell Cogen's entire output, as specified in the original PPA, from January 1, 2001, until January 1, 2010 (the "Restructured Agreement"). The price for that output was scheduled to rise each year from 14.2 cents per kWh in 2001 to 17.7 cents per kWh in 2010. Commonwealth's fixed and escalating monthly payments to Lowell Cogen, net of the market value of any electricity delivered, were included in the variable component of its transition charge as above-market PPA costs.

In 1999, Commonwealth and Lowell Cogen entered into an agreement to terminate Commonwealth's obligations to purchase electricity from that facility (the "Lowell Cogen Buy-Out Agreement"). In consideration for the termination of the purchase obligation, Commonwealth agreed to pay Lowell Cogen \$1,061,790 per month for 54 months, after which the contractual relationship between Commonwealth and

Lowell Cogen will end. Under the terms of the Lowell Cogen Buy-Out Agreement, Commonwealth continues to have the right to call the Lowell Cogen unit back into service if needed, as a dispatchable unit, on a temporary basis rather than on the continuing basis specified under the Restructured Agreement. In addition, during any call-back period, Commonwealth would pay Lowell Cogen for its documented variable cost of energy delivered plus 25 percent of the \$1,061,790 base monthly payment, in addition to the base payment. The Department approved the Lowell Cogen Buy-Out Agreement on October 27, 1999. Commonwealth Electric Company, D.T.E. 99-69 (1999).

The Lowell Cogen Buy-Out Agreement will reduce total transition costs for Commonwealth's customers by approximately \$26 million in present-value terms, by eliminating the variable transition costs associated with the Lowell Cogen contract. These savings represent approximately 30 percent of Commonwealth's obligation under the restructured contract and approximately 39 percent of the transition cost portion of that obligation.

6. Renegotiation by Boston Edison, Cambridge and Commonwealth of Purchase Power Agreement with Southern

Boston Edison entered into a PPA with Canal on December 1, 1965, to purchase 25 percent of the capacity and energy from Canal Unit 1. Cambridge and Commonwealth also entered into a similar PPA with Canal on that date. As part of the divestiture of the Canal generation assets to Southern, Canal assigned this agreement to Southern Energy Canal, L.L.C. effective December 30, 1998, the closing date for the sale of Canal Unit 1

to Southern. The PPAs were cost-of-service agreements approved by the FERC that allowed for the pass-through of both fixed and variable costs to the purchasing utilities. Each of the Companies paid Canal a demand rate relating to capital expenditures, along with an energy rate proportionate to the companies' share of the total fuel expense of the facility.

The Companies negotiated an amended agreement with Southern that includes a two-part demand rate, a fixed base amount and a fixed selective catalytic reduction ("SCR") charge (the "Amended Agreement"). The Department approved the Amended Agreement for Boston Edison in Boston Edison Company, D.T.E. 99-78 (2000) and approved the Amended Agreement for Cambridge and Commonwealth in Cambridge Electric Light Company/Commonwealth Electric Light Company, D.T.E. 99-15 (2000).<sup>10</sup>

The Amended Agreements will save the Companies' customers approximately \$7.6 million, on a net-present-value basis, over the remaining term of the contracts. The savings consist of approximately \$900,000 in reduced base demand charges and \$2.9 million in reduced SCR charges for each contract.

7. Buy-Down of Cambridge and Commonwealth's Power Purchase Agreement Relating to the Seabrook Nuclear Generating Facility

As discussed briefly in Section III, supra, Cambridge, Commonwealth and Canal

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<sup>10</sup> The Department approved Reinstatement Agreements along with the amended agreements in D.T.E. 99-78 and D.T.E. 99-15. The Reinstatement Agreements were negotiated and filed with the Department because the Amended Agreements had been rejected originally by the FERC, on the grounds that it required the consent of the other purchasers of electricity from Canal Unit 1. The consent of the other purchasers was subsequently obtained, and FERC accepted the Amended Agreements for filing.

are currently parties to a life-of-the-unit PPA for electric output from Seabrook, which terminates in 2026 (the “Seabrook Agreement”). Under the terms of the Seabrook Agreement, Commonwealth is entitled to 80.06 percent (approximately 32.5 MW), and Cambridge is entitled to 19.94 percent (approximately 8 MW) of the capacity and related energy produced by Canal’s entitlement to Seabrook (approximately 40.5 MW).

Cambridge and Commonwealth have agreed to make a lump-sum payment of \$141,600,000 (the “Buy-Down Amount”) to Canal in exchange for Canal's reduction of the gross plant investment of the Seabrook Agreement. Commonwealth will contribute \$113,365,000 to the Buy-Down Amount, while Cambridge will contribute \$28,235,000 to the Buy-Down Amount.<sup>11</sup> These funds will come primarily from Cambridge’s and Commonwealth’s fossil divestiture proceeds, currently held by NSTAR’s special-purpose affiliate, Energy Investment Services, Inc. (“EIS”).<sup>12</sup>

The customer savings from the Buy-Down Agreement derive primarily from the difference between the rate of return embedded in the Seabrook Agreement and the projected return earned on EIS funds. The Seabrook Agreement contains an embedded rate of return of 10.55 percent, while the EIS funds have been invested in short-term United States government issues that have produced an average annual return of 4.69

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<sup>11</sup> The Buy-Down Amount reflects the Second Restated Sixth Amendment to the Seabrook Agreement, which was filed with the Department on December 15, 2000.

<sup>12</sup> EIS is a special purpose affiliate established to hold and manage the net proceeds from the sale of Canal’s electric generating facilities. EIS makes disbursements from its funds with the ultimate purpose of reducing the transition costs of Cambridge and Commonwealth. The Department approved the establishment of EIS in Cambridge Electric Light Company/Canal Electric Company/Commonwealth Electric Company, D.T.E. 98-78/83-A (1998).

percent.

In addition, the Buy-Down Agreement does not preclude the possibility of additional mitigation, such as that which may occur depending on the results of the Seabrook Auction, described infra. The Department approved the Buy-Down Agreement on October 26, 2000. Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 99-89 (2000).<sup>13</sup> Cambridge's customers will realize savings of approximately \$2.5 million from the buydown of the Seabrook PPA and Commonwealth's customers will realize savings of approximately \$21 million.

8. Renegotiation by Cambridge of PPA with Vermont Yankee

Under the terms of an agreement with Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), Cambridge is obligated to purchase 2.5 percent of the net capacity, output, and ancillary products of the Vermont Yankee facility through November 30, 2002.<sup>14</sup> In addition, under the terms of an additional agreement, Cambridge is obligated to purchase 2.5 percent of the net capacity, output and ancillary products of the facility through 2012. These agreements provide that decommissioning costs must be paid monthly, whether or not the facility is operating.

The joint owners of Vermont Yankee have attempted to sell the facility, which is

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<sup>13</sup> A Motion for Reconsideration of the Department's order in D.T.E. 99-89 has been filed by the Attorney General and is pending before the Department.

<sup>14</sup> However, through the period ending November 30, 2002, Cambridge's purchase obligation is effectively reduced to 2.25 percent of the net capacity, output and ancillary products of Vermont Yankee as a result of the resale in 1970 by the non-Vermont sponsors of an aggregate 4.5451 percent of the facility's output to certain municipal electric utilities.

located in Vernon, Vermont, to AmerGen Energy Company, L.L.C. As part of this sale, Cambridge was able to reduce its financial obligation for the power produced by the facility by the new owner. Under that agreement, which was filed for approval with the Department in D.T.E. 00-09, Cambridge would continue to purchase electricity from Vermont Yankee at a new, fixed-price schedule and eliminate future risks regarding changes in the facility's decommissioning costs, capital improvements, and operating and maintenance expenses. This renegotiated agreement would have saved Cambridge's customers approximately \$2.7 million on a net-present value basis. Presently, the joint owners of Vermont Yankee are attempting to improve on the terms of the sale of the facility, and are entertaining bids from other prospective purchasers. Any further renegotiation of Cambridge's obligations will achieve even greater savings for its customers.

#### **D. Other PPA Mitigation Efforts**

In addition to formal third-party solicitations relating to the divestiture of PPAs, NSTAR Electric has, on an ongoing basis, attempted to renegotiate or buy out existing PPAs, if such actions would result in the mitigation of transition costs. Boston Edison has made renegotiation or buy-out proposals to MASSPOWER, NEA and Ocean State Power. Cambridge and Commonwealth have made renegotiation or buy-out proposals to MASSPOWER, Altresco-Pittsfield and SEMASS. Although none of these proposals has led to further mitigation, the Companies will continue to pursue mitigation of their remaining PPAs with the owners of the generating facilities.

## **V. REFINANCING EFFORTS**

### **A. Securitization of Boston Edison's Transition Costs**

On July 29, 1999, Boston Edison, through a special-purpose entity, successfully completed the issuance of \$725 million of rate reduction bonds ("RRBs"), which effected the securitization of substantially all of the remaining fixed component of the Company's transition costs, as well as certain costs to effectuate the buyout of the LELP PPA (see Section IV.C.4, supra). The issuance of the RRBs also allowed the company to complete the funding of the Decommissioning Trust for Pilgrim in order to permit the sale of that facility (see Section III.A, supra). This was the first, and to date the only, securitization of transition costs in the Commonwealth and represented a groundbreaking effort by numerous parties to implement Massachusetts General Laws, c. 164, § 1H, as added by the Act.

Securitization was succinctly explained by the Department in its order approving Boston Edison's issuance of RRBs:

Securitization is a method for a company to refinance transition costs. The Restructuring Act authorized an electric company to securitize its transition costs by issuing RRBs to investors that will be repaid through a portion of the transition charge. The RRBs, if assigned a high credit rating, will have an interest rate lower than the carrying charge paid by ratepayers as part of the transition charge, thereby generating savings to ratepayers.

Boston Edison Company, D.T.E. 98-118, at 6-7 (1999) (citations and footnotes omitted).

In order to maximize the savings obtainable from securitization, the RRBs must achieve the highest possible credit rating from national rating organizations. The rating of debt instruments backed by regulatory assets such as the RRBs is not tied to the rating

of the distribution company; rather, it is based on an analysis of the underlying collateral and the specific transaction structure. A credit rating analysis takes into account elements that are customary in an asset securitization and combines them with a detailed analysis of the regulatory and legal foundation of the asset account and the collection mechanisms. Rating organizations consider certain characteristics of RRBs when determining ratings, such as: (1) the bankruptcy-remoteness of the seller, (2) the predictability and nonbypassability of the RTC charge, (3) standards governing a third party supplier, (4) credit enhancement; and (5) the Commonwealth's assurance of irrevocability and other statutory safeguards.<sup>15</sup>

Boston Edison's efforts to mitigate transition costs by means of securitization commenced prior to the passage of the Act when Boston Edison worked with legislators and other interested parties to develop appropriate legislative provisions to permit securitization. A primary focus of Boston Edison's effort was to allow securitization as a means to fund potential decommissioning obligations and thus to effectuate the divestiture of nuclear generating assets.

The Act established the Massachusetts Development Finance Agency and the Massachusetts Health and Educational Facilities Authority (collectively, the "Agencies") as the financing entities for RRBs. G.L. c. 164, § 1H(a). Accordingly, after the enactment of the Act, Boston Edison, along with the Department, the Agencies, other Massachusetts-based electric companies and other interested parties, such as investment

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<sup>15</sup> Upon issuance, a financing order is irrevocable and may not be altered by the Department.



bankers and statistical rating organizations, developed a structure for a securitization transaction. These efforts culminated in the filing by Boston Edison with the Department on December 3, 1998 of a proposed financing order prepared in consultation with the Agencies, Lehman Brothers, and Goldman Sachs, and the Commonwealth of Massachusetts Executive Office of Administration and Finance. Following extensive hearings before the Department investigating the structure of the proposed transaction, the transition costs to be securitized and the amount of customer savings to be realized, the Department issued an order on April 2, 1999 (and subsequently amended on May 21, 1999) authorizing the requested issuance of RRBs and approving the proposed financing order.

Following the issuance of the Department's orders approving the proposed transaction, Boston Edison, in conjunction with the Agencies and underwriters, proceeded through the various stages of issuance, including marketing and the establishment of appropriate credit ratings, to minimize the cost of issuing the proposed RRBs, to assure their acceptance in the investment community and thereby to assure the maximum mitigation of transition costs. The process was successfully concluded on July 29, 1999 with the issuance of \$725 million in RRBs.<sup>16</sup>

The RRBs allowed Boston Edison effectively to reduce its carrying charge of

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<sup>16</sup> All costs of issuance of the RRBs were presented to the Department for approval in the initial financing order and were updated in Boston Edison's subsequent annual reconciliation proceedings. Moreover, all costs of administering the RRBs and revenues received associated with repayment of the RRBs remain subject to periodic true-up and reconciliation over the life of the bonds.

10.88 percent for all unrecovered transition costs (as approved in the Company's Restructuring Settlement) to under 8 percent (i.e., net of the effect of associated issuance and transaction costs). The RRBs will be paid off with interest over a ten-year period expiring in 2010. See D.T.E. 98-118 (Boston Edison Company Issuance Advice Letter, July 28, 1999). As a result of Boston Edison's effort to securitize its transition costs, Boston Edison's customers will realize net savings of approximately \$76 million.

**B. Buy-Down of Cambridge and Commonwealth's Regulatory Assets**

Prior to the divestiture of COM/Electric's fossil-fueled assets, Cambridge and Commonwealth were deferring the costs of several regulatory assets relating to divested generation assets, consistent with FERC ratemaking policy. However, in D.T.E. 98-78/83-A, the Department required them to eliminate their remaining regulatory asset balances by netting them against Cambridge's and Commonwealth's respective fossil-fueled asset divestiture proceeds. Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 98-78/83-A at 13 (1998). Applying funds from EIS, the balances of the remaining regulatory assets were netted against the Residual Value Credit on July 1, 1999. Accordingly, the book balance and tax basis of regulatory assets for the period 2000 and beyond are projected to be zero. See Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 99-90 (Exhibit RHM-1, at 34 and Schedule 1, at 6 and 6A). The customer savings from eliminating the balances from these regulatory assets are derived primarily from the difference between the rate of return associated with these assets and the projected return earned on EIS funds.

## **VI. MITIGATION OF NON-GENERATION ASSETS NOT NEEDED FOR TRANSMISSION OR DISTRIBUTION SERVICES**

Since March 1, 1998, Boston Edison, Cambridge and Commonwealth have divested themselves of some non-generation-related assets that will result in customer savings. In Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 99-90, Cambridge and Commonwealth requested that the Department approve the flow back to customers of approximately \$368,000 relating to the sale of certain real estate (see Exhibit RJM-1, at 22 (October 26, 1999)). In addition, as part of its regular reconciliation proceedings later this year, NSTAR Electric will include the net proceeds from the sale of other real estate that is not needed for transmission or distribution purposes to be flowed back to customers. These mitigation measures, involving the sale of non-generation-related assets, will provide additional transition charge mitigation benefits for NSTAR Electric's customers.

In addition, as a part of the Restructuring Settlement, which was approved by the Department in Boston Edison Company, D.P.U./D.T.E. 96-23 (1998), Boston Edison committed to divest its LaGrange Street Property in Newton, Massachusetts with the net proceeds to be included as a residual value credit in mitigation of Boston Edison's transition costs. See Restructuring Settlement, Attachment 3, Sections 1.1(a)(vii) and 1.4(a). The LaGrange Street Property includes two undeveloped parcels of land totaling 42 acres located off LaGrange and Vine Streets in the Oak Hill section of

Newton.<sup>17</sup> The property is largely woodland with some wetland areas. The property is residentially zoned and is almost wholly surrounded by single-family homes. It was originally acquired by Boston Edison in 1970 for future utility use and has been carried on Boston Edison's books at \$800,000.

Following execution of the Restructuring Settlement, Boston Edison began to investigate the most appropriate manner of selling the LaGrange Street parcel. This included discussions with potential brokers and developers as well as Newton and state officials. In response to concerns raised by Newton officials, Boston Edison deferred placing the property on the open market so that the city could investigate its options either to acquire the property for open space or other purposes. Boston Edison remains committed to a sale of the property that will maximize mitigation of transition costs in a fashion that is consistent with the public interest.

## **VII. THE RATEPAYER PARITY TRUST FUND**

In the SOSFA Order, the Department requested comments on "whether the Department can or should use the Ratepayer Parity Trust Fund to mitigate the effects of the rate increase [relating to the SOSFA]" D.T.E. 00-66, 00-67, 00-70, at 15-16 (footnote omitted). NSTAR Electric would welcome the use of the Ratepayer Parity Trust Fund (the "Fund") as a means to mitigate the effects of the rate increases resulting from the recent increase in fuel costs. However, the Act appears to limit the applicability of the

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<sup>17</sup> A small parcel of property owned by Boston Edison across LaGrange Street (approximately two acres) is currently used for a substation, and would not be divested.

Fund to circumstances in which a distribution company is unable to meet the mandated, inflation-adjusted 15 percent rate decrease. G.L. c. 10, § 62. Nonetheless, the Companies believe that the intent of the fund is to ease the burden on customers if extraordinary assistance is needed to achieve expected rate reductions under the Act. Although NSTAR Electric has achieved the required 15 percent rate reduction, the recent increases in fuel costs have had a significant impact on customers.

Accordingly, NSTAR Electric urges the Department to determine the level of monies available in the Fund, and work with the Department of Revenue and the Legislature to ensure that the proceeds in the Fund can be used to mitigate the customer rate increases resulting from the extraordinary increase in fuel costs.

## **VIII. CONCLUSION**

NSTAR Electric appreciates the opportunity to review its mitigation efforts since the inception of the Act and to provide a comprehensive report on these efforts to the Department. As proven by the scope and depth of the mitigation efforts undertaken by Boston Edison, Cambridge and Commonwealth since March 1, 1998, NSTAR Electric has complied with both the letter and the spirit of the Act. NSTAR Electric has achieved approximately \$1.4 billion in savings for its customers in the past three years through its successful divestiture of its fossil facilities, its first-in-the-nation divestiture of its nuclear facilities, the renegotiation of several PPAs, the refinancing of transition costs and even the divestiture of certain non-generation assets. These savings have resulted in transition charge decreases for NSTAR Electric's customers of 26 percent for Commonwealth, 40 percent for Boston Edison and 48 percent for Cambridge since those in effect on March 1,

1998. Indeed, on several occasions since March 1, 1998, the Department has approved the mitigation efforts of Boston Edison, Cambridge and Commonwealth and found that the Companies had both individually and collectively mitigated their transition costs to the maximum extent possible. NSTAR Electric will continue its efforts to mitigate transition costs over the coming years, consistent with the Act and with Department precedent.

